IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

WAYNE J. CHURCH, Plaintiff, v. DEPARTMENT OF CORRECTION, STANLEY TAYLOR, RAFAEL WILLIAMS, and B.T.A.L., Defendants.	)	Civil Action No. 00-085-SLR

MEMORANDUM ORDER

Plaintiff Wayne J. Church, SBI #268309, a pro se litigant, is presently incarcerated at the Multi-Purpose Criminal Justice Facility ("Gander Hill") located in Wilmington, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, the court must determine whether plaintiff is eligible for pauper status. On February 9, 2000, the court granted plaintiff leave to proceed in forma pauperis and ordered him to pay $1.67 as an initial partial filing fee within thirty days from the date the order was sent. Plaintiff paid the $1.67 on March 7, 2000.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).[1] If the court finds plaintiff's complaint falls under any of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] As discussed below, plaintiff's claims have no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. Complaint

Plaintiff alleges that at approximately 10:30 p.m. on January 12, 2000, one of the inmates in Cell 18 flushed the toilet and it overflowed into plaintiff's cell, Cell 17. Plaintiff further alleges that Officer Wright, who plaintiff has not named as a defendant, allowed the "tierman" to clean up the

[2] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

tier as well as Cell 18.[3] However, plaintiff alleges that Officer Wright ignored his request to open the cell door, so he could clean his cell as well. Plaintiff claims that after the shift change at 12:00 a.m., he asked the correctional officer on duty to open the door. Plaintiff alleges that he had to wait until 1:00 a.m. to clean his cell. Plaintiff further alleges that he had to wait until the next day to get clean sheets and to take a shower. (D.I. 2 at 3) Plaintiff alleges that he filed a grievance, but did not receive a response from prison authorities. (D.I. 2 at 2) Plaintiff requests a declaratory judgment and unspecified damages for his pain and suffering. (D.I. 2 at 4)

B. Analysis

1. Absence of Physical Injury Required by § 1997e(e)

Plaintiff alleges that all of the defendants have violated his right to be free from cruel and unusual punishment under the Eighth Amendment, because a toilet overflowed into his cell. Plaintiff does not allege that he suffered any physical injury while he waited for his cell to be cleaned. Plaintiff merely alleges that he waited three and one half hours for his cell to

[3] Plaintiff has listed "B.T.A.L." as a defendant in the complaint. However, he has not indicated who or what this defendant is. Nor has he raised any allegations specifically regarding this defendant. Consequently, the court is unable to address any issues regarding this defendant in the memorandum order.

be cleaned. He requests that the court "hold and make the defendants responsible for their actions. They know they are overcrowded and have put us in jeopardy health wise and should be made to pay for our pain [and] mental anguish." (Id.)

When Congress enacted the PLRA, it limited the types of law suits prisoners could bring for damages. Specifically, § 1997e(e) of the PLRA, entitled "Limitation on Recovery," provides:

> No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

The Third Circuit has held that "[u]nder § 1997e(e)..., in order to bring a claim for mental or emotional injury, suffered while in custody, a prisoner must allege physical injury." Allah v. Al-Hafeez, 226 F.3d 247, 250 (3d Cir. 2000). Section 1997e(e) limits recovery of compensatory damages, but does not bar prisoners from seeking nominal damages or punitive damages to vindicate constitutional rights. See id., at 251; Doe v. Delie, 257 F.3d 309, 314 n.3 (3d Cir. 2001). Therefore, to the extent that plaintiff is seeking compensatory damages, his claim is barred by § 1997e(e).

2. Plaintiff's Eighth Amendment Claim

To the extent that plaintiff is seeking a declaratory

judgment, as well as nominal and punitive damages, his claim must still fail. "It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 32 (1993). However, to establish an Eighth Amendment violation, plaintiff must allege that he has endured a sufficiently serious deprivation and that the defendants have acted with deliberate indifference to his plight. Wilson v. Seiter, 501 U.S. 294, 298 (1991). Thus, in order to prove that the defendants have violated his rights under the Eighth Amendment, plaintiff must satisfy a two prong test which is both objective and subjective. Id.

To satisfy the objective prong, plaintiff must allege that he is "incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Helling v. McKinney, 509 U.S. at 35). Serious harm will be found only when the conditions of confinement "have a mutually enforcing effect that produces the deprivation of a single identifiable human need such as food, warmth, or exercise," and "[n]othing so amorphous as 'overall conditions' can rise to the level of [such a violation] when no specific deprivation of a single human need exists." Blizzard v. Watson, 892 F.Supp. 587, 598 (D. Del. 1995) (citing Wilson v. Seiter, 501 U.S. at 303-304).

Here, plaintiff alleges that he had to wait a matter of hours to have his cell cleaned and to receive clean sheets and a blanket after a toilet backed up into his cell. (D.I. 2 at 3) Several courts have found that certain conditions are not cruel and unusual because the inmate was subjected to the condition for only a short period of time. See e.g. Miller v. Glanz, 948 F.2d 1562, 1569-70 (10th Cir. 1991)(plaintiff experienced only "momentary discomfort when he was handcuffed in "awkward position" for two hours); Harris v. Fleming, 839 F.2d 1232, 1235-36 (7th Cir. 1988)(plaintiff "experienced considerable unpleasantness" for five days due to "filthy, roach infested cell" but conditions were not unconstitutional); Whitnach v. Douglas County, 16 F.3d 954, 958 (8th Cir. 1994)(plaintiffs experienced "intolerable conditions" for less than 24 hours before "adequate cleaning supplies" were made available to make conditions tolerable).

Although plaintiff's experience as described was unpleasant, it was not unconstitutional. Plaintiff has not satisfied the objective prong of the Helling requirements. Accordingly, it is not necessary to address the subjective prong of the Helling requirements. See Helling v. McKinney, 509 U.S. at 35. Plaintiff's claim that the defendants violated his rights under the Eighth Amendment has no arguable basis in law or in fact. Therefore, plaintiff's Eighth Amendment claim against the

defendants is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

3. Plaintiff's Vicarious Liability Claim

Even if plaintiff's Eighth Amendment claim was not frivolous, the court would dismiss plaintiff's claim against defendants Taylor and Williams. Plaintiff states that defendant Taylor is the Commissioner of the Department of Correction ("DOC") and that defendant Williams is the Warden at Gander Hill. (D.I. 2 at 2) Plaintiff has not made any specific allegations regarding these defendants. In fact, nothing in the complaint indicates that either defendant was aware of the incident on January 12, 2000.

Plaintiff's claim against defendants Taylor and Williams is based solely on a vicarious liability theory and must also be dismissed. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989)). Here, plaintiff does not raise any

specific allegations regarding defendants Taylor or Williams. Rather, plaintiff implies that these defendants are liable simply because of their supervisory positions. (D.I. 5 at 2)

Nothing in the complaint indicates that any of the defendants were the "driving force [behind]" Officer Wright's actions, or that they were aware of plaintiff's allegations and remained "deliberately indifferent" to his plight. Sample v. Diecks, 885 F.2d at 1118. To the extent that plaintiff seeks to hold defendants Taylor and Williams vicariously liable for Officer Wright's actions, he has no arguable basis in law or in fact. Therefore, plaintiff's vicarious liability claim against defendants Taylor and Williams is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

4. Eleventh Amendment and Sovereign Immunity

Finally, plaintiff's claim against the Department of Correction must also fail. "[T]he Supreme Court has held that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." Ospina v. Dep't of Corrections, State of Del., 749 F.Supp. 572, 577 (D. Del. 1991) (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989)). The Department of Correction, as a state agency, is not a person under § 1983. Consequently, "[a]bsent a state's consent, the Eleventh

Amendment bars a civil rights suit in federal court that names the state as a defendant." Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam)). Furthermore, the State of Delaware has not waived its sovereign immunity under the Eleventh Amendment. See Ospina v. Dep't of Corrections, 749 F.Supp. at 579. Plaintiff's claim against the Department of Correction has no arguable basis in law or in fact. Therefore, plaintiff's claim against the Department of Correction is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, at Wilmington this 18th day of December, 2002, IT IS HEREBY ORDERED that:

1. To the extent that plaintiff is seeking compensatory damages, his claim is barred under 42 U.S.C. § 1997e(e).

2. Plaintiff's Eighth Amendment claim is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

3. To the extent that plaintiff is attempting to hold defendants Taylor and Williams vicariously liable for Officer Wright's action, his claim is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

4. Plaintiff's claim against the Department of Correction is DISMISSED as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

5. The clerk shall mail a copy of the court's Memorandum Order to the plaintiff.

Sue L. Robinson
UNITED STATES DISTRICT JUDGE